

REMARKS

Claims 1 through 11 are pending in this application. No claim has been amended.

Applicants have reviewed the specification for minor errors, but no changes are believed necessary at the present time.

The Examiner acknowledged Applicants' claim for foreign priority, however, stated that a certified copy of the priority document has not been received. Applicants note that on June 20, 2002, Applicants submitted a certified copy of the priority document. A copy of the stamped postcard, forwarding letter and first page of the priority document is attached hereto to verify that the PTO received the priority document. Accordingly, the Examiner is respectfully requested to acknowledged receipt of the priority document in the next correspondence.

Claims 1-11 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Harumoto et al. (U.S. Pat. No. 6,563,984, hereinafter "Harumoto") or Shigehara et al. (U.S. Pat. No. 6,317,538, hereinafter "Shigehara"). The rejection is respectfully traversed and withdrawal of the rejection is solicited.

Although Applicants disagree that the claimed invention is obvious predicated upon Harumoto or Shigehara, to expedite prosecution of the Application, Applicants submit that the references to Harumoto and Shigehara cannot be properly applied against the present Application under 35 U.S.C. § 103. According to 35 U.S.C. § 103(c), and as discussed in M.P.E.P. § 2146, subject matter that qualifies as "prior art" only under 35 U.S.C. § 102(e) cannot be considered when determining whether an invention is obvious under 35 U.S.C. § 103, provided the subject matter and the claimed invention were at the time the invention was made, owned by the same person or subject to our obligation to assignment of the same person.

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The respective cover pages of U.S. Patent No. 6,563,984 to Harumoto and U.S. Patent No. 6,317,538 to Shigehara indicate that these Patents were assigned to Sumitomo Electric Industries, Ltd. of Osaka, Japan. Under M.P.E.P. § 702.02(I), common ownership at the time the later invention was made can be evidenced by referring to an assignment which is recorded in the Patent and Trademark Office in accordance with 37 C.F.R. Part 3. The Assignment of Application No. 10/082,134 (the present Application) to Sumitomo Electric Industries, Ltd. of Osaka, Japan was executed on May 28, 2002. This Assignment was recorded in the U.S. Patent and Trademark Office on June 20, 2002, and the Assignment appears at Reel 013020, Frame 0938.

Therefore, the subject matter disclosed by Harumoto and Shigehara and Applicants' claimed invention were commonly owned at the time the invention was made or subject to an obligation of assignment to the same person, i.e., Sumitomo Electric Industries, Ltd. of Osaka, Japan. As such, under 35 U.S.C. § 103(c), the references to Harumoto and Shigehara cannot be considered by the Examiner when determining whether Applicants' invention is obvious under 35 U.S.C. § 103. Accordingly, the rejections are not legally viable and the Examiner is requested to reconsider and withdraw the rejections over claims 1 through 11.

It is believed that all pending claims are now in condition for allowance. Applicants therefore respectfully request an early and favorable reconsideration and allowance of this application. If there are any outstanding issues which might be resolved by an interview or an Examiner's amendment, the Examiner is invited to call Applicants' representative at the telephone number shown below.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper,

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including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

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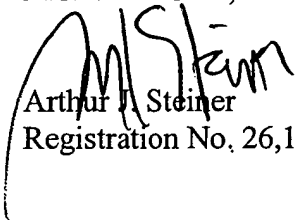
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Please charge Deposit Account No. 500417 in the amount of \$1000.00. To the extent necessary, Applicants petition for an extension of time under 37 C.F.R. 1.136. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

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